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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

PAKISTAN NATIONAL SHIPPING CORP.,

Petitioner,

—v.—

MOUNT ROYAL MARINE REPAIRS, LTD., ALUMINUM COMPANY OF CANADA, LIMITED and EMPIRE STEVEDORING COMPANY, LTD.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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Questions Presented

Must a District Court, in a federal question maritime suit involving a shipping company owned by a foreign state, apply a uniform federal standard in determining the Fifth Amendment due process limits of acquiring personal jurisdiction of third-parties impleaded into the suit?

Is the long arm statute of New York, which permits jurisdiction of a foreign corporation that derives substantial revenue from international commerce and commits a tort which it knows could cause injury and does cause injury in New York, unconstitutional under the Due Process Clause of the Fifth Amendment?

Parties Involved

All parties to the proceeding below are named in the caption of the case except for Thomas Mascuzzio, plaintiff decedent, by Anna Mascuzzio, his administratrix, the plaintiff below. This information is provided pursuant to Supreme Court Rule 21.1(b).

Pakistan National Shipping Corp. is a foreign state as defined in 28 U.S.C. 1603 its shares being owned by the Government of Pakistan. This information is provided pursuant to Supreme Court Rule 28.1.

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IN THE

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October Term, 1984

No. 84-

PAKISTAN NATIONAL SHIPPING CORP.,

Petitioner,

—v.—

MOUNT ROYAL MARINE REPAIRS, LTD., ALUMINUM COMPANY OF CANADA, LIMITED and EMPIRE STEVEDORING COMPANY, LTD.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

The petitioner, PAKISTAN NATIONAL SHIPPING CORP., respectfully prays that a writ of certiorari be issued to review the decision of the Second Circuit in this case, entered on January 23, 1985.

Opinions Below

The opinion of the Court of Appeals was reported at No. 84-7712 (2d Cir. January 23, 1985) and is set forth in the Appendix, *infra,* pp. A1 to A2. The decision of the United States District Court for the Southern District of New York is not officially reported and appears in the Appendix, *infra,* pp. A3 to A12, dated June 29, 1984.

Jurisdiction

The opinion of the Court of Appeals for the Second Circuit was entered on January 23, 1985.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Constitutional and Statutory Provisions Involved

AMENDMENT V—CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

§302. Personal jurisdiction by acts of non-domiciliaries

(a) Acts which are the basis of jurisdiction. As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent:

1. transacts any business within the state; or

2. commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act; or

3. commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if he (i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce; or

4. owns, uses or possesses any real property situated within the state.

(b) Personal jurisdiction over non-resident defendant. A court in any matrimonial action or family court proceeding involving a demand for support or alimony may exercise personal jurisdiction over the respondent or defendant notwithstanding the fact that he or she no longer is a resident or domiciliary of this state, or over his or her executor or administrator, if the party seeking support is a resident of or domiciled in this state at the time such demand is made, provided that this state was the matrimonial domicile of the parties before their separation, or the defendant abandoned the plaintiff in this state, or the obligation to pay support or alimony accrued under the laws of this state or under an agreement executed in this state.

(c) Effect of appearance. Where personal jurisdiction is based solely upon this section, an appearance does not confer such jurisdiction with respect to causes of action not arising from an act enumerated in this section.

Statement

On the morning of July 30, 1981 Thomas Mascuzzio and other longshoremen employed by Universal Maritime Services Corp. boarded the M/V KAPTAI owned by PAKISTAN NATIONAL SHIPPPING CORP. ("PAKISTAN"), a state con-

trolled carrier, while that vessel was moored at Pier 2 Port Authority in Brooklyn. The longshoremen first proceeded to the No. 2 hatch upper 'tween deck of that vessel to remove hatch boards and hatch beams in order to load cargo in the lower portions of that hatch. (CR-10)*

Mr. Mascuzzio is said to have been walking on the hatch boards when two of those boards gave way causing him to fall into the next level of the No. 2 hatch and sustain personal injuries. It is further alleged that Mr. Mascuzzio died as a result of those injuries. (CR-9)

Anna Mascuzzio, the administratrix of the estate of Thomas Mascuzzio, commenced suit in the United States District Court, Southern District of New York, alleging that the injuries and death were caused by PAKISTAN having failed to furnish a safe place to work. In particular, Mascuzzio claims that PAKISTAN failed to supply suitable, safe and adequate walking and working surface and that the hatch beams and boards were not properly put in place. (CR-9)

In that MOUNT ROYAL MARINE REPAIRS, LTD. ("MOUNT ROYAL") had recently measured for, manufactured and delivered hatch boards for the No. 2 hatch upper 'tween deck (A-55); EMPIRE STEVEDORING COMPANY, LTD. ("EMPIRE") had last placed the hatch beams in the No. 2 hatch upper 'tween deck (A-57); and ALUMINUM COMPANY OF CANADA, LIMITED ("ALCAN") had last placed the hatch boards in the forward end of the No. 2 hatch upper 'tween deck, each was impleaded as a third-party defendant.

1. The District Court Decision

Because the dispute between PAKISTAN and EMPIRE, MOUNT ROYAL and ALCAN involved a maritime matter,

*Citations to the record below are to the Court Record, cited CR.

jurisdiction lay in the District Court pursuant to F.R.C.P. 9(h) and 28 U.S.C. §1333(1). In addition, PAKISTAN being a state controlled carrier, the District Court also had jurisdiction pursuant to 28 U.S.C. §1330.

EMPIRE, MOUNT ROYAL and ALCAN, in lieu of answering, moved the District Court to dismiss the third-party complaint for lack of personal jurisdiction.

Each requested and the District Court orally granted a stay of all discovery pending a determination of the motion to dismiss.

The District Court held that New York's long arm statute, C.P.L.R. §302(a)(3)(ii), as applied to the facts of this case was unconstitutional under the Due Process Clause of the United States Constitution. Accordingly, the District Court dismissed PAKISTAN's third-party complaint.

2. The Court of Appeals Decision

On appeal from the District Court's judgment, the Second Circuit affirmed stating only that its affirmance was substantially for the reasons given in Judge Motley's opinion, dated June 29, 1984.

Reasons for Granting the Writ of Certiorari

I. The lower federal courts are in complete disaccord as to whether a federal or state standards govern the constitutional limits of *in personam* jurisdiction in federal question cases.

A. The lower courts have specifically recognized the uncertainty on this issue.

This Court has greatly clarified the constitutional perimeters of the lower federal courts on the issues of personal jurisdiction

in diversity and quasi-in-rem cases. *World-Wide Volkswagen Corp.* v. *Woodson,* 444 U.S. 286; *Insurance Corp. of Ireland* v. *Compagnie Des Bauxites de Guinea,* 456 U.S. 694; *Shaffner* v. *Heitner,* 443 U.S. 186. The test to be applied in determining personal jurisdiction in federal question cases, however, has clearly not been authoritatively established. Although the same issue of the standards to be used in determining personal jurisdiction were expounded on at length by Justices Friendly and Clark in *Arrowsmith* v. *United Press International,* 320 F.2d 219 (2d Cir. 1963), that court stated that it expressed no opinion on whether a federal standard may govern jurisdiction over foreign corporations in federal questions litigation.

Federal courts have continued to leave open the question whether state law or federal law is controlling on this issue. *Koupetoris* v. *Konkar Intrepid Corp.,* 535 F.2d 1392, 1395 n. 13 (2d Cir. 1976); *Aquascutum of London* v. *S.S. AMERICAN CHAMPION,* 426 F.2d 205, 211 n. 4 (2d Cir. 1970).

The question of which law, state or federal, determines the federal courts personal jurisdiction of a foreign corporation, as stated in *Moore's Federal Practice* has given rise to conflicting and confusing decisions. ¶4.25[7] and numerous law review articles and commentaries referred to in n. 1 thereto.

B. The failure to establish a clear test has led the lower courts to expound irreconcilable criteria and hence reaching conflicting results.

Two recent cases in addition to this case, all involving personal jurisdiction of foreign corporations in lawsuits involving injured longshoremen in United States ports, highlight the conflicting tests and results due to the lack of a uniform standard.

In *De James* v. *Magnificence Carriers, Inc.,* 654 F.2d 280 (3 Cir. 1981) the court, over a vigorous dissent, held that the personal jurisdiction of the foreign Japanese corporation must be judged by the standards of the Fourteenth Amendment and

not the Fifth Amendment. The majority reasoned that despite the defendant knowing that the product of its labor (the converted ship) by necessity would call at different ports of the world there was no jurisdiction and based its conclusion on the lack of economic benefit the foreign corporation received from the residents of New Jersey.

In *Hedrick* v. *Daiko Shoji Co., Ltd., Osaka,* 715 F.2d 1355 (9 Cir. 1983), the court found *in personam* jurisdiction of a foreign Japanese corporation constitutionally permissible. The product of labor in *Hedrick* was a wire splice delivered to a vessel which at some later time called at a port in Oregon. The court agreed with the dissenting judge in *De James* that when one supplies a product of labor to an ocean carrier, the fact that the ship goes to a foreign port is not fortuitous. It is certain.

The District Court below based the constitutional test on the extent of defendants' contacts with the state in which the court was sitting. This approach, while stated to be a Fifth Amendment approach, was certainly more analogous to one under the Fourteenth Amendment testing the constitutional extent of a state exercising its sovereignty.

A quite different and more proper test was used in *Leasco Data Processing Equipment Corp.* v. *Maxwell,* 468 F.2d 1326 (2d Cir. 1972). *Leasco* involved an analysis of personal jurisdiction of an entity committing acts outside of the United States having an effect in New York. *Leasco* cited as a classic example of where personal jurisdiction would exist as a man who shoots a bullet across a state boundary. Certainly, a Canadian corporation who creates a hidden trap in having an unsecured hatch board placed on an ocean going vessel knows with more certainty that the first person who steps on the area of the hidden trap will be bodily injured than someone who randomly shoots a bullet across the border. *Leasco* held that the proper test was laid down in §18 of the Restatement (Second) of Foreign Relations Law and specifically that the effect "occurs as a direct and foreseeable result of the conduct outside the territory."

The First Circuit in *Trans-Asiatic Oil Ltd., S.A.* v. *Apex Oil Company,* 743 F.2d 956 (1 Cir. 1984), has held that the limits on a state's power over non-resident defendants do not apply to a federal court sitting in admiralty in that state.

In sum, it is apparent that the constitutional analysis in federal question cases has been inconsistent and in conflict leading to an incorrect test and result in this case.

II. The finding that New York's long arm statute is unconstitutional will be particularly disruptive of New York, federal and maritime practice.

The decision below that although the defendant(s) admittedly derived substantial revenues from international commerce and knew the product of their labor was going to be in the jurisdiction of the District Court, that court cannot constitutionally exercise jurisdiction unless the defendant has attempted to serve the market of the state in which the court sits, not only will cause uncertainty in federal question cases, but also in New York State litigation.

Recent case law following this Court's holding in the Fourteenth Amendment case of *Insurance Company of Ireland, supra,* that due process is not a matter of sovereignty, but of individual liberty will be eroded.

By basing its constitutional analysis on a state sovereign test and the quantity of the contacts with a given state the decision will only lead to greater litigation with less predicability. *See, GRM* v. *Equine Inv. and Man. Group,* 596 F.Sup. 307 (S.D. Texas 1984).

CONCLUSION

The decision in this case highlights the lack of a uniform standard upon which the lower courts have written conflicting decisions in an area that is a foundation of the federal court system. PAKISTAN submits this had led to the lower court erroneously finding the New York statute unconstitutional and thereby dismissing the third-party complaints.

Respectfully submitted,

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APPENDIX

Opinion of the Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 23rd day of January, one thousand nine hundred and eighty-five.

Present: HONORABLE WILFRED FEINBERG
Chief Judge

HONORABLE HENRY J. FRIENDLY
HONORABLE WALTER R. MANSFIELD
Circuit Judges

84-7712

THOMAS MASCUZZIO, Plaintiff Decedent by ANNA MASCUZZIO, his administratrix,

Plaintiff-Appellee,

—v.—

PAKISTAN NATIONAL SHIPPING CORP.,

Defendant and Third-Party Plaintiff-Appellant,

—v.—

MOUNT ROYAL MARINE REPAIRS, LTD., ALUMINUM COMPANY OF CANADA, LIMITED and EMPIRE STEVEDORING COMPANY, LTD.,

Third-Party Defendants-Appellees.

Opinion of the Court of Appeals

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the judgment of said District Court be and it hereby is AFFIRMED substantially for the reasons given in Judge Motley's opinion, dated June 29, 1984.

WILFRED FEINBERG,
Chief Judge

HENRY J. FRIENDLY

WALTER R. MANSFIELD
Circuit Judges

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

Opinion of the District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THOMAS MASCUZZIO, Plaintiff Decedent by ANNA MASCUZZIO, his administratrix,

Plaintiff,

—against—

PAKISTAN NATIONAL SHIPPING CORP.,

Defendant and Third-Party Plaintiff,

—against—

MOUNT ROYAL MARINE REPAIRS, LTD., ALUMINUM COMPANY OF CANADA, LIMITED and EMPIRE STEVEDORING COMPANY, LTD.,

Third-Party Defendants.

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MOTLEY *Ch. J.*

Opinion of the District Court

Memorandum Opinion

Plaintiff, by his administratrix, has brought this action, under the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§901 *et seq.*, to recover damages arising out of personal injuries and wrongful death. On July 30, 1981, plaintiff, a longshoreman working aboard the M/V KAPTAI (the vessel), was injured by a fall on board that vessel while it was docked in New York City. The injuries suffered in this fall allegedly resulted in plaintiff's death. Defendant Pakistan National Shipping Corp. (PNC) has filed a third-party complaint against three Canadian companies, Mount Royal Marine Repairs, Ltd. (MRM), Aluminum Company of Canada, Limited (ALCAN) and Empire Stevedoring Company, Ltd. (Empire). PNC argues that it should have a right of indemnification or contribution against the third-party defendants for any recovery obtained by plaintiff.

Plaintiff fell from the upper 'tween deck of the vessel's No. 2 hatch to the deck below when hatch boards on which he was walking gave way. MRM had manufactured and delivered new hatch boards to the vessel in Canada before the vessel arrived in New York City. ALCAN may have put the hatch boards in place prior to plaintiff's fall. The hatch beams upon which the hatch boards rested had been removed and replaced in Canada by Empire.

This case is before the court on motions made by the third-party defendants. All three third-party defendants ask the court to dismiss the third-party complaint for lack of *in personam* jurisdiction. ALCAN also moves in the alternative, asking the court to dismiss the third-party complaint on the ground of *forum non conveniens*. The court concludes that it does not have personal jurisdiction over the third-party defendants. Therefore, the court grants the motion to dismiss the third-party complaint

as to all third-party defendants. Accordingly, the court does not address ALCAN's *forum non conveniens* argument.

Discussion

Analysis of these motions to dismiss proceeds on two levels. First, the court must consider the operation of the applicable section of the New York long-arm statute. Second, the court must determine whether the due process clause will permit a finding of jurisdiction over these parties. The Second Circuit apparently has not considered the precise question raised by these motions to dismiss. This court's own reading of relevant case law indicates that the motions should be granted.[1]

The essential question under New York law is whether jurisdiction exists under the New York long-arm statute, N.Y. C.P.L.R. §302(a)(3)(ii) (McKinney 1972). Section 302(a) provides for jurisdiction over a person who,

> 3. commits a tortious act without the state causing injury to person or property within the state, . . . if he . . . (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce.[2]

The court will assume that the third-party defendants derive substantial revenue from international commerce. Thus, the key to a ruling under New York law is a determination as to

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[1]The court sees no need to allow PNC to use additional discovery to search for further support for its case. *See Data Disc, Inc.* v. *Systems Technology Associates, Inc.*, 557 F.2d 1280, 1285 n.1 (9th Cir. 1977); *Findlay* v. *Duthuit*, 86 A.D.2d 789, 790, 446 N.Y.S.2d 951, 953 (1st Dep't 1982).

[2]There has been no suggestion that other provisions of the long-arm statute are applicable to this case.

whether the third-party defendants expected or reasonably should have expected their acts to have consequences in New York.

PNC has not satisfied its burden of proving the reasonableness of such expectation with respect to MRM and ALCAN. *Beacon Enterprises, Inc.* v. *Menzies*, 715 F.2d 757, 762 (2d Cir. 1983). In order to establish a reasonable expectation as provided for in section 302(a)(3), there must have existed "some potential [New York] consequence [which] was reasonably forseeable rather than fortuitous." *Tracy* v. *Paragon Contact Lens Laboratories, Inc.*, 44 A.D.2d 455, 458, 355 N.Y.S.2d 650, 653 (3rd Dep't 1974). The test for determining whether such reasonable forseeability exists is objective rather than subjective. *Allen* v. *Auto Specialties Mfg. Co.*, 45 A.D.2d 331, 333, 357 N.Y.S.2d 547, 550 (3rd Dep't 1974). In addition, the test is to be viewed in terms of general forum consequences rather than specific consequences. *Id.* Even so, the evidence before the court does not support a finding of a reasonable expectation of forum consequences for MRM and ALCAN. *See Martinez* v. *American Standard*, 91 A.D.2d 652, 457 N.Y.S.2d 97 (2d Dep't 1982), *aff'd mem.*, 60 N.Y.2d 873, 470 N.Y.S.2d 367 (1983). Neither MRM nor ALCAN has offices or employees in New York. Neither party solicits business here directly or indirectly by means of a telephone listing. The simple fact that vessels calling in Canada often call at ports along the eastern seaboard does not create a reasonable expectation of consequences in New York. Indeed, for MRM and ALCAN only "sheer speculation" would posit New York consequences. *Fantis Foods, Inc.* v. *Standard Importing Co.*, 49 N.Y.2d 317, 327 n.4, 425 N.Y.S.2d 783, 787 n.4, 402 N.E.2d 122, 125 n.4 (1980).

PNC's claim that Empire had actual notice of the vessel's itinerary places Empire in a different light. By itself, the fact that one of Empire's employees knew that the vessel would call

at New York City might or might not create a reasonable expectation of forum consequences on the part of Empire. *Cf. Insurance Company of North America* v. *Marina Salina Cruz,* 649 F.2d 1266, 1274 (9th Cir. 1981) (Schroeder, J. concurring). In view of the conclusions which follow, however, the court sees no reason to make further inquiry into whether Empire should have expected its actions to have New York consequences.

The court's holding that New York law will not permit a finding of jurisdiction over MRM and ALCAN appears contrary to the decision in *Garbellotto* v. *Montelindo Compagnie Navegacion, S.A.,* 294 F. Supp. 487 (S.D.N.Y. 1969). *See also Farina* v. *Compania Sud Americana de Vapores,* 68 AMC 829 (1968). *Garbellotto* is distinguishable from the instant case in that the third-party defendant in *Garbellotto* did not raise the issue of reasonable forseeability of New York consequences. *Id.* at 489. To the extent that *Garbellotto* is indistinguishable from the instant case, the court finds *Garbellotto* unpersuasive in light of more recent interpretation of the long-arm statute provided by New York courts.

The court also must consider whether the constitutional concerns of the due process clause will permit jurisdiction over the third-party defendants. Resolution of the due process concerns in this case turns on the court's reading of the Supreme Court's decision in *World-Wide Volkswagen Corp.* v. *Woodson,* 444 U.S. 286 (1980). In that case, the Supreme Court held that the due process clause required more than "the mere likelihood that a product will find its way into the forum State." *Id.* at 297. Instead, the Court searched for contacts which suggested that the petitioner, a New York automobile dealer, "should [have] reasonably anticipate[d]" being called into court in Oklahoma. Finding more, the court held that Oklahoma could not exercise jurisdiction over the petitioner. The Court distinguished

the situation in which a manufacturer or distributor attempted to service a market. In a related vein, the Court observed that the due process clause allows jurisdiction over corporations which place products into the "stream of commerce." *Id.* at 298. Under those circumstances, corporations might be deemed to have " 'purposefully [availed themselves] of the privilege of conducting activities within the forum State.' " *Id.* at 297 (*citing Hanson* v. *Denckla*, 357 U.S. 235, 253 (1958)).

As an initial matter, the court notes the absence of any mechanical test for evaluating compliance with the due process clause. *Insurance Company of North America* v. *Marina Salina Cruz*, 649 F.2d at 1270. Instead, the court must balance the circumstances present in the individual case. The court concludes that subjecting any of these third-party defendants to jurisdiction here would violate the due process clause of the fifth amendment.[3]

It cannot be said that the third-party defendants in this case were attempting to serve the New York market. The extent of any contact with this forum consists of Empire's advertisement in a publication originating in New York. Empire's president

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[3]The Ninth Circuit employs a three-step analysis of due process problems: (1) the non-resident must purposely avail itself of the benefits of conducting activities in the forum in question, (2) the claim must arise out of the non-resident's forum-related activities, (3) jurisdiction over the non-resident must appear reasonable. *See, e.g., Data Disc, Inc.* v. *Systems Technology Associates, Inc.*, 557 F.2d at 1287. The opinions in *Insurance Company of North America* v. *Marina Salina Cruz*, 649 F. 2d 1266, 1270 (9th Cir. 1981), and *Hedrick* v. *Daiko Shoji Co., Ltd., Osaka*, 715 F.2d 1355, 1359 (9th Cir. 1983), suggest that the ultimate test is primarily one of reasonableness. Thus, this court will not follow the procedure set forth in *Data Disc*. Instead, the court will consider generally whether the third-party complaint adheres to the admonition in *World-Wide Volkswagen* that the third-party defendants should "reasonably anticipate being haled into court" in New York. 444 U.S. at 297.

also is alleged to have visited New York on several occasions. As indicated, none of the third-party defendants has manufacturing facilities, offices, employees or directory listings in New York. That the misconduct alleged by PNC is the result of negligence or recklessness rather than intentional activity further militates against a finding of purposeful activity in this case. *Insurance Company of North America* v. *Marina Salina Cruz,* 649 F.2d at 1270-71; *Data Disc. Inc.* v. *Systems Technology Associates, Inc.,* 557 F.2d 1280, 1288 (9th Cir. 1977).

The court finds the position of the third-party defendants in this case analogous to that of the defendant in *Marina Salina Cruz.* In that case, the Ninth Circuit found that the principles of due process propounded in *World-Wide Volkswagen* would not permit Alaska to exercise long-arm jurisdiction over a Mexican shipyard charged with negligent repair of a vessel which sank in Alaskan waters. The court reached this conclusion even though the defendant shipyard allegedly was aware that the vessel would travel to Alaska. The court explained that exercise of long-arm jurisdiction would be "unreasonable" given the "minimal nature of the shipyard's purposeful interjection into Alaska." *Id.* at 1271. Similarly, the absence of any significant involvement in New York by the third-party defendants makes jurisdiction over them appear unreasonable. *See also DeJames* v. *Magnificence Carriers, Inc.,* 654 F.2d 280, 285-86 (3d Cir.), *cert. denied,* 454 U.S. 1085 (1981).

The court could adopt the alternative tack of accepting jurisdiction under the "stream of commerce" analysis prominent in products liability decisions. *DeJames,* 654 F.2d at 285; *American President Lines Ltd.* v. *Metropolitan Stevedore Services,* 567 F. Supp. 169, 171 (W.D. Wash. 1983). Those decisions typically involve standardized goods distributed on a mass scale. *Cf. Hedrick* v. *Daiko Shoji Co., Ltd., Osaka,* 715 F.2d 1355, 1358 (9th Cir. 1983). Essential to the maintenance of juris-

diction in such actions is the existence of "an extensive chain of distribution" for the product in question. *DeJames,* 654 F.2d at 285. Under stream of commerce analysis, a manufacturer is susceptible to jurisdiction because it derives legal and economic benefits from "increasing the distribution of its products through indirect sales within the forum." *Id.*

PNC relies heavily on a decision resting on stream of commerce analysis, *Hedrick* v. *Daiko Shoji Co. Ltd., Osako,* 715 F.2d at 1358. *See* Tr. at 9-10. In *Hedrick,* a Ninth Circuit panel reversed dismissal of a claim against a Japanese manufacturer of wire-rope splices. The panel explained that "[w]hile Daiko's purposeful interjection of its activities into Oregon was not extensive, the company sent a defective product into the world market with knowledge that harm could occur wherever a defect should manifest itself." *Id.* at 1359.

Stream of commerce analysis is inapplicable to this case. Neither the character of goods provided nor the chain of their distribution is that of a products liability action. The hatch boards manufactured by MRM are individually cut for each vessel. Tr. at 4-5. As the court noted at the hearing of this motion, the manufacture of hatch boards is carpentry work which is different in kind from the mass production of wire-rope splices in *Hedrick.* Tr. at 10-11; *see Hedrick,* 715 F.2d at 1358 ("Daiko produces over 300,000 splices per year, many of them for ocean-going vessels. Daiko, though it produces its splices only in Japan, manufactures for a world-wide market and provides splices for ships that serve world ports."). Clearly, the stevedoring activities of ALCAN and Empire constitute the provision of services rather than the introduction of goods into a world market. Also absent from this case is any indication of benefits accruing to the third-party defendants from an extensive chain of distribution. Accordingly, the court will not characterize PNC as a "distributor" for the third-party defendants.

DeJames, 654 F.2d at 286. In sum, the court will not accept jurisdiction over the third-party defendants under the rubric of stream of commerce analysis.[4]

CONCLUSION

For the reasons discussed above, the court grants the motions of the third-party defendants to dismiss the third-party complaint against them for lack of personal jurisdiction, Fed. R. Civ. P. 12(b)(2).

Dated: New York, New York
June 29, 1984

CONSTANCE BAKER MOTLEY
Chief Judge

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[4]The court notes that Canada offers a reasonable alternative forum for resolution of the third-party claims. Moreover, New York's interest in protecting the interest of a non-resident third-party plaintiff, like PNC, is not as great as New York's interest in protecting the rights of New York plaintiffs. *See Donnely* v. *Copeland Intra Lenses, Inc.,* 87 F.R.D. 80, 85 (E.D.N.Y. 1980).